

Sep 05, 2018

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JULIO CESAR AYALA,

Defendant.

No. 4:16-cr-06042-EFS-2
[No. 4:18-cv-05064-EFS]

ORDER DENYING § 2255 MOTION

Clerk's Office Action Required

Before the Court, without oral argument, is Defendant Julio Cesar Ayala's pro se Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence, ECF No. 201.

On October 21, 2016, the Government filed a complaint and on November 1, 2016, filed an indictment, charging Mr. Ayala with two counts of conspiracy to distribute 500 grams or more of methamphetamine. See ECF Nos. 1 & 50. On July 24, 2017 – the morning of trial – Mr. Ayala signed a plea agreement and pleaded guilty to an information superseding the indictment, which charged only one count of conspiracy to distribute 50 grams or more of methamphetamine. See ECF Nos. 147, 151, & 152. On November 27, 2018, the Court sentenced Mr. Ayala to 120 months' imprisonment. ECF No. 199. Mr. Ayala did not appeal, and he now seeks to challenge his sentence under 28 U.S.C. § 2255.

On June 26, 2018, the Court conducted a preliminary review of Mr. Ayala's § 2255 motion. In the resulting order, ECF No. 202, after

setting forth the relevant facts and procedural history as well as the applicable law, the Court advised Mr. Ayala that his motion appeared to be without merit and provided him the opportunity to voluntarily withdraw or amend it to address the identified deficiencies. Because Mr. Ayala has not done so – and for the reasons stated in the Court’s previous order, ECF No. 202 – the Court denies his motion.

Accordingly, **IT IS HEREBY ORDERED:**

1. Defendant Julio Cesar Ayala's pro se Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence, **ECF No. 201**, is **DENIED**.

2. The Court **DECLINES** to issue a certificate of appealability.¹

3. The Clerk's Office, pursuant to Federal Rule of Civil Procedure 58(a), is directed to **ENTER JUDGMENT** for the United States in the related civil file, **No. 4:18-cv-05064-EFS**.

4. The Clerk's Office is directed to then CLOSE both files:
No. 4:16-cr-06042-EFS-2 and No. 4:18-cv-05064-EFS.

IT IS SO ORDERED. The Clerk's Office is directed to enter this order, enter judgment in favor of the United States, and then provide copies to Mr. Ayala, former defense counsel, and the Government.

DATED this 4th day of September 2018.

s/Edward F. Shea
EDWARD F. SHEA
Senior United States District Judge

¹ See 28 U.S.C. § 2253(c) (allowing such a certificate "only if the applicant has made a substantial showing of the denial of a constitutional right").